

### **REMARKS**

Claims 40 and 44-47 remain in this application. Claim 40 has been amended to include, among other things, the limitations of claims 41, 42, and 43, while claims 41, 42, and 43 have been cancelled. Additionally, new claim 48 has been added. However, no new subject matter is believed to have been added by these amendments.

In Section No. 3 of the Office Action, the Examiner indicates that the Applicant made an election without traverse electing claims 40-47 for examination. As a result, in the current Amendment the unelected claims have been designated as withdrawn.

In Section No. 5 of the Office Action, the Examiner rejects claims 40-41 and 43-45 under 35 U.S.C. §102(b) as being anticipated by the teaching of United States Patent No. 6,058,682 to Pajak, et al. (hereinafter the "Pajak patent"). The Pajak patent is directed to a method for sealing a container, whereby, as illustrated in Fig. 7, the container 10 includes a cut membrane 34a and a cover 92 with an item 96 such as a spoon therebetween. Claim 40 has been amended to specify the distance between the film and the inside wall of the container to be 20-50 mm below the peripheral edge and, furthermore, has been amended to introduce a scoop, whereby the lid is provided with a fixing means for the scoop. Additionally, the limitations of claims 41-43 have been added to claim 40 and these claims have been cancelled. Neither of these features is disclosed or suggested by the Pajak patent and, for that reason, claim 40, as amended, is not believed to be anticipated by the teaching of the Pajak patent. For the same reasons, dependent claims 44 and 45 are themselves not believed to be anticipated by the teaching of the Pajak patent.

In Section No. 7 of the Office Action, the Examiner rejects claim 42 under 35 U.S.C. §103(a) as being obvious from the teaching of the Pajak patent, in view of United States Published Patent Application No. 2004/0178207 to Kim (hereinafter the "Kim application"). Additionally, in Section No. 8, the Examiner rejects claims 46 and 47 under 35 U.S.C. §103(a) as being obvious from the teaching of the Pajak patent, in view of the teaching of United States Patent No. 3,556,174 to Gibble. Claim 40, as amended, is believed to be patentably distinct over the prior art of record and, therefore, based upon their dependence upon what is believed to be

patentably distinct independent claim 40, dependent claims 46 and 47 are themselves believed to be patentably distinct over the prior art of record.

In Section No. 9 of the Office Action, the Examiner rejects claims 40-45 under 35 U.S.C. §103(a) as being obvious from the teaching of the French Patent No. FR 2,747,107 (hereinafter the '107 patent), in view of the teaching of the Pajak patent. The Examiner cites the KSR Int'l v. Teleplex Inc. case in support of the rejection. The Applicant respectfully requests that care should be taken not to confuse the views expressed in KSR with hindsight. In fact, the KSR Opinion explicitly warns against hindsight and *ex post* reasoning. Additionally, the KSR court also indicates that two references may not be properly combined if an argument exists based on the fact that the embodiments in one document combine with the features in another document do not solve the problem of the invention.

In the current invention based upon the claims, the purpose of the packaging is to combine a cheap packaging which can be produced at high speed, and with a minimal amount of waste, with easy-to-use properties, and to provide a packaging which can be used several times and which is hygienic, even when the package is opened and closed and the scoop is taken out many times. As a result, the Applicant believes that it is not appropriate to combine these references to arrive at the subject invention. Furthermore, however, the Applicant does not believe that even if these references were combined, the end result would be the invention as claimed. In particular, the '107 patent shows, in Figs. 1 and 2, a metal can packaging (4). A lid (1) with a snap-on rim (2) is provided, which is evident from the drawings. The scoop (3) is too deep to fit between the lid (1) and the seal (7). Furthermore, the scoop (3) is attached to the rim (2) via bridges (6). The lid (1) in Fig. 2 cannot be closed. Figs. 3 and 4 illustrate the result when the packaging of the '107 patent is used. First, the scoop is broken loose from the rim and subsequently the lid (7) ("opercule 7") of the metal can is removed. The scoop (3) is then snapped onto the lid (1) and the lid (1) can be closed. Figs. 5 and 6 show two embodiments which allow the rim (2) to be attached to the can (4) with the scoop (3) still attached to the rim (2) and allow the lid (1) to be closed.

On the other hand, Pajak discloses a food container having a cup (10) for holding a food product and a recessed membrane (34a) sealed along the inner wall of the cup (10). An

item such as a scoop (96) can rest on the membrane and a cover (92) can be placed over the cup (10). The lid (92) is clearly not intended to be used frequently. Furthermore, after the seal is removed, the spoon, if provided, can only be placed in the container on top of the product. Thus, a used spoon can come into contact with the contents. In fact, as the packaging disclosed in the Pajak patent is a disposable packaging, it is intended for use only once and the topic of reuse is not addressed in this patent.

The Kim application on the other hand, discloses a snap-on lid for a drinking cup having a valve that can be operated by the lip of the user. Kim does not teach or suggest the type of packaging of the current invention. In fact, Kim does not disclose a seal adhered on the inside wall of the container and it does not teach or suggest the need for a scoop nor relate to the problem of storing such a scoop. Furthermore, Kim does not discuss the problem of providing a recloseable lid.

In the KSR case cited by the Examiner, the Court held that applying the TSM principles with too much rigidity is not correct. It was however confirmed that “a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” In the current application, in fact, there are features of claim 1 which are not even disclosed in the prior art documents presented. In the current claim, for instance, the rim is adhered to the top edge of the container.

A skilled person will not combine the teaching of the Pajak patent with the teaching of the ‘107 application. In fact, there does not seem to be any problem identified in one of the documents which may be solved by teachings in the other document. The ‘107 application relates to a can and does not require a seal like the current invention. Furthermore, in both the Pajak patent and the ‘107 application, the lid needs to be removable in order to be able to remove the seal. Therefore, the current invention is not a predictable result when combining the teaching of the Pajak patent, the Kim application, or the ‘107 application.

A combination of selected features from the Pajak patent or the Kim application does not lead a skilled person anywhere near the current invention. Kim has a lid which does not need to be opened again and again until the contents of the packaging is fully used. In fact, both the Pajak patent and the Kim application relate to a packaging which is disposable after one use.

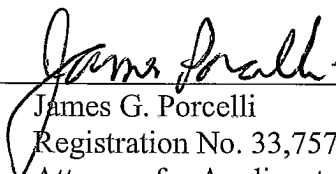
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Thus, the disclosure of the Kim application does not require adhering the lid rim into the peripheral top edge of the container. Furthermore, the Kim application does not need to solve the question of storage of the spoon after removal of the seal. In fact, the Kim application does not even disclose a seal.

For these reasons, the Applicant believes that claim 40, as amended, is patentably distinct over the prior art of record and the remaining dependent claims for reasons heretofore discussed are themselves believed to be patentably distinct over the prior art of record. Additionally, based upon their dependence upon what is believed to be patentably distinct independent claim 40, the dependent claims are themselves are believed to be patentably distinct over the prior art of record.

Reconsideration and allowance of pending claims 40 and 44-48 are respectfully requested.

Respectfully submitted,  
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